

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-651-W - ORDER NO. 93-670 *lc*
JULY 23, 1993

IN RE: Application of E&R Partnership for) ORDER
Approval of a New Schedule of Water Rates) APPROVING
for Water Service Provided to it Customers) RATES AND
in South Carolina. (Lake Marion Shores)) CHARGES

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of Application filed by E&R Partnership (E&R or the Company) on February 9, 1993, for an increase in its rates and charges for water service provided to its customers in Clarendon County, South Carolina. This Application was filed pursuant to S.C. Code Ann., §58-5-240 (1976), as amended and 26 S.C. Regs. 103-821 (1976), as amended.

By letter dated February 25, 1993, the Commission's Executive Director instructed the Company to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the area affected by the Company's Application. The Notice of Filing indicated the nature of the Company's Application and advised all interested parties of the manner and time in which to file appropriate pleadings. Additionally, the Company was instructed to directly notify all of its customers affected by the proposed increase. The Company submitted affidavits indicating that it had complied with these instructions. Twenty-one letters of Protest

were received, and Petitions to Intervene were filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate), William Kenneth Brown, Thomas R. Miller, Muriel K. Hanna, and Patricia Hobbs (the Intervenors).

On July 7, 1993, a public hearing concerning the matters asserted in the Company's Application was held in the Commission's Hearing Room. Pursuant to S.C. Code Ann., §58-3-95 (Supp. 1992), a panel of three (3) Commissioners, Commissioners Arthur, Mitchell, and Frazier, was designated to hear and rule on this matter. Commissioner Arthur presided. The Company was represented by Marion S. Riggs, Esquire; the Intervenor, Consumer Advocate for the State of South Carolina was represented by Carl F. McIntosh, Esquire; the Intervenors, William Kenneth Brown, Thomas R. Miller, Muriel K. Hanna, and Patricia Hobbs appeared pro se; and the Commission Staff was represented by F. David Butler, General Counsel.

The Company presented the testimony of H. F. Oliver and Aaron W. Rentz, III. The individual Intervenors testified on their own behalf. The Commission Staff presented the testimony of Sharon G. Scott, Accountant, and William O. Richardson, Utilities Engineer.

Upon full consideration of the Company's Application, the evidence presented at the hearing, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. E&R provides water service to 200 residential customers in Clarendon County, South Carolina. It appears from the records that the Company is presently operating under rates set by Order No. 81-636, issued on September 17, 1981 in Docket No. 81-319-W. The Company's territory consists Lake Marion Shores Subdivision and pursuant to Order No. 92-892, issued October 7, 1992 in Docket No. 92-423-W, Gin Pond Shores Subdivision of Davis Crossroads, both in Clarendon County. No adjustments or revenue figures were available for the Gin Pond Shores Subdivision, therefore, the rates stated herein shall apply only to the Lake Marion Shores Subdivision.

2. With regard to E&R's present rates, the Company has a flat fee of \$9.00 per month for water service. The Company proposes to increase this rate to \$20.00 per month, an increase of 122.22%. This increase amounts to a \$26,400 increase in revenues. The present revenue of the Company is \$21,600 annually. With the increase, this would amount to \$48,000. The Company presently has a tap fee of \$200.00. The Company does not propose to change this fee at this time.

3. E&R asserts that its requested increase in rates and charges is necessary and justified because the Company's present rates do not generate enough income to properly maintain the system and to ensure adequate water services for all of its customers. According to the testimony of Mr. H. F. Oliver, E&R is a private water utility that serves some 200 customers in

Clarendon County, South Carolina, with a potential for an additional 200 customers. Oliver states that at the time the present rate structure was approved, the approved amounts were reasonable. Oliver asserts that since that time, there have been continuing expense increases, and he further asserts, that in the year 1993, the added costs of operating the Company has increased to a great degree. Mr. Oliver further testified that the Company was under Orders from the Department of Health and Environmental Control (DHEC) to add a substantial amount of additional equipment, and to perfect more testing procedures.

Mr. Aaron W. Rentz, III of DHEC also testified on behalf of the Company. Rentz stated that he believed that the overall quality of the utility facility was good. According to Mr. Rentz, there had been some problems with the system during the time of Mr. Oliver's hospitalization in the fall of 1992. DHEC monitors routine samples of bacteriological and chemical quality of the water, and further, mandates chlorination. Rentz stated that there have been and continue to be problems regarding the chlorine level throughout the entire system, and problems in eliminating the hydrogen sulfide and associated odor. Rentz further stated that some of these problems are related to the type of system, i.e., a small full-time occupancy with spotty and limited water consumption. Rentz further notes, that on any water system, there could be pockets with these types of problems, but that with this system, the problems are more widespread. Rentz stated that periodic flushing of the main lines would help improve the quality

of the water. Rentz also testified that Mr. Oliver had added major physical items since August 1992, including chlorine injection pumps at each of the four wells, and water meters on each of the four wells. Mr. Oliver has also repaired leaks, checked for cross-connections, and developed written procedures for bacteriological sampling, emergency chlorination, and system flushing.

4. The four individual Intervenors appeared pro se and testified before the Commission. William Kenneth Brown testified that the E&R Partnership system had had broken pipes for five years. Brown further stated that he would have no problem with a fair rate increase after the system was cleaned up. Brown stated his belief that a check valve was needed at each customer entrance from the main water line to prevent back flow. In Brown's opinion, back flow from customer lines contributed significantly to the problems seen with the system.

5. Thomas R. Miller testified that he has tested the chlorine levels at his house, and that the chlorine ranges from 0 to 3 parts per million at different times. Muriel K. Hanna testified that E&R Partnership was not providing quality water, and that the Company's increase was not justified until better water was provided.

6. Patricia Hobbs testified that the water at her home was tested six times, and was found to be contaminated at various times with total coliform and total fecal bacteria. Ms. Hobbs stated that all these tests were done after DHEC had issued a

notice that the system had been disinfected, and the water quality was supposed to be satisfactory. At one point, in August of 1992, DHEC had issued a notice stating that the water was contaminated and not safe to use. DHEC had since corrected the problem with the bacterial infestation, although the testimony of Aaron Rentz stated that occasional bacterial contamination had appeared as recently as two months prior to the hearing date. All Intervenors testified to the fact that the Company was not readily available by telephone.

7. Under the Company's presently approved rates, after pro forma and accounting adjustments, the Commission's Staff determined that E&R's operating revenues, operating expenses, and net income for return were \$21,600, \$17,229, and \$4,393 respectively, for the test year ending December 31, 1992. The Company proposes operating revenues, expenses, and a net income for return of \$48,000, \$22,515, and \$25,613 respectively.

8. E&R did not contest the accounting adjustments proposed by the Commission Staff.

CONCLUSIONS OF LAW

1. The Company is a water utility providing service in its service area within South Carolina. The Company's operations in South Carolina are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann., §58-5-10 et seq. (1976), as amended.

2. A fundamental principle of the ratemaking process is the establishment of a historical test year as a basis for calculating a utility's revenues and expenses, and consequently, the validity

of the utility's requested rate increase. While the Commission considers the utility's proposed rate increase based upon occurrences within the test year, the Commission will consider adjustment for any known and measurable and out-of-test-year charges and expenses, revenues, and investments, and will also consider adjustments for any unusual situations which occurred in the test year. See Southern Bell Telephone & Telegraph Company v. The Public Service Commission of South Carolina, 270 S.C. 490, 244 S.E. 2d 278 (1978). In light of the fact that the Company proposes that the 12-month period ending December 31, 1992, as the appropriate test year, and Staff has audited the Company's books for that test year, the Commission concludes that the 12-month period ending December 31, 1992 is the appropriate test year for the purposes of this rate request.

3. The Commission concludes that each of the Staff adjustments proposed by the Commission Staff are appropriate and are hereby adopted by the Commission. The Commission notes that the Company did not contest the Staff's adjustments.

4. The Commission concludes that after pro forma and accounting adjustments, the Company test year operating revenues, operating expenses, and net income for return for its system were \$21,600, \$17,229, and \$4,393 respectively. These figures are reflected in Table A as follows:

TABLE A
NET INCOME FOR RETURN

BEFORE RATE INCREASE

Operating Revenues	\$ 21,600
Operating Expenses	17,229
Net Operating Income	\$ 4,371
Customer Growth	22
Total Income for Return	<u>\$ 4,393</u>

5. Under the guidelines established in the decisions of Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944), this Commission does not ensure through regulation that a utility will produce net revenues. As the United States Supreme Court noted in Hope, a utility "has no constitutional rights to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." However, employing fair and enlightened judgment and giving consideration to all relevant facts, the Commission should establish rates which will produce revenues "sufficient to assure confidence in the financial soundness of the utility... that are adequate under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield, supra, at 692-693.

6. There is no statutory authority prescribing the method which this Commission must utilize to determine the lawfulness of the rate of a public utility. For a water utility whose rate base

has been substantially reduced by customer donations, tap fees, contributions in aid of construction, and book value in excess of investment, the Commission may decide to use the "operating ratio" and/or "operating margin" method for determining just and reasonable rates. The operating ratio is the percentage obtained by dividing total operating expenses by operating revenues; the operating margin is determined by dividing the total operating income for return by the total operating revenues of the utility.

The Commission concludes that use of the operating margin is appropriate in this case. Based on the Company's gross revenues, operating expenses, and customer growth for the test year, the Company's present operating margin for combined operations is as follows:

TABLE B
OPERATING MARGIN

BEFORE RATE INCREASE

Operating Revenues	\$ 21,600
Operating Expenses	17,229
Net Operating Income	\$ 4,371
Customer Growth	22
Total Income for Return	<u>\$ 4,393</u>
Operating Margin	<u>20.34%</u>

7. The Commission is mindful of the standard delineated in the Bluefield decision and of the need to balance the respective interests of the Company and of the consumer. It is incumbent upon this Commission to consider not only the revenue requirement of the Company but also the proposed price for the water treatment, the

quality of the water service, and the effect of the proposed rates upon the consumers. See Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 401 S.E. 2d 672 (1991); S.C. Code Ann., §58-5-290 (1976), as amended.

8. The fundamental criteria of a sound rate structure have been characterized as follows:

...(a) the revenue-requirement or financial-need objective, which takes the form of a fair-return standard with respect to private utility companies; (b) the fair-cost apportionment objective which invokes the principle that the burden of meeting total revenue requirements must be distributed fairly among the beneficiaries of the service; and (c) the optimum-use or consumer rationing under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received.

Bonbright, Principles of Public Utility Rates (1961), p. 292.

9. Based on the considerations enunciated in Bluefield and Seabrook Island, and on the fundamental criteria of a sound rate structure as stated in Principles of Public Utility Rates, the Commission determines that the Company should have the opportunity to earn a 41.78% operating margin. In order to have a reasonable opportunity to earn an 41.78% operating margin, the Company will need to produce \$33,600 in total annual operating revenues.

TABLE C
OPERATING MARGIN

AFTER RATE INCREASE

Operating Revenues	\$ 33,600
Operating Expenses	19,632
Net Operating Income	\$ 13,968
Customer Growth	70
Total Income for Return	<u>\$ 14,038</u>
Operating Margin	<u>41.78%</u>

10. In order to earn the additional operating revenues necessary to earn an operating margin of 41.78%, additional annual revenues will be required of \$12,000. In order to earn these additional revenues, the present flat rate of \$9.00 per month will have to be increased to \$14.00 per month for the Company's customers.

11. The Commission, however, has carefully reviewed the financial status of the Company and its requested increase in its rates and charges. Further, the Commission has also considered the testimony of the Intervenor witnesses in this case, who have been customers of the system for a number of years. The Commission takes special notice of the testimony of William Kenneth Brown. There is no question that, according to Brown and several of the other Intervenor, the quality of the water on the system is poor. Brown testified that as a part of a cleanup of the system, that it would be appropriate to install a check valve at each customer line entrance to the main line to prevent back flow. In Brown's opinion, back flow from individual customer's lines, was a

substantial source of the systems problems. The Commission agrees with Brown, and in fact, believes that, due to the testimony concerning the poor quality of the water, the Commission hereby makes the rate increase allowed above contingent on the Company's installing check valves on each customer's line at Company expense. Once check valves have been installed on each line, and the Staff has verified the installations, and the installations have been certified to the Commission, the rate increase as stated above shall become effective upon subsequent Order of the Commission. As each additional customer comes on the line, a check valve shall be installed in that customer's line at Company expense.

12. In considering the requested increase, the Commission has considered the interest of the utility, as well as the customers of E&R Partnership. The Commission has determined that the proposed increase is unreasonable, and that a more appropriate increase would be accomplished with a \$14.00 flat rate as shown in Appendix A attached to this Order. Again, this rate shall not become effective until check valves are installed on each present customer's line in the system. Once the valves are installed, and verified as installed by the Staff, and certified to the Commission, the Company may institute the new rate upon subsequent Order of the Commission.

13. Accordingly, it is ordered that the rate attached on Appendix A is hereby approved for service rendered on or after the completion of the procedure as stated above.

14. It is ordered that if the approved schedule is not placed

in effect within three (3) months after the date of the completion of the described procedure, the approved schedule shall not be charged without written permission of the Commission.

15. It is further ordered that the Company maintain its books and records for water operations in accordance with the NARUC Uniform System of Accounts for water and sewer utilities as adopted by this Commission.

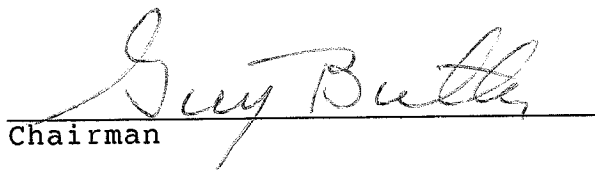
16. The Commission believes that, pursuant to the testimony in this case, the Gin Pond Shores Subdivision is being operated as a separate utility, run by Mr. Tim Oliver, and therefore, not affected by this increase in rates.

17. That this Order shall remain in full force and effect until further Order of the Commission.


BY ORDER OF THE COMMISSION:

ACTING

Chairman



ATTEST:


Deputy Executive Director

(SEAL)

APPENDIX A

E & R PARTNERSHIP
P. O. BOX 44
MANNING, S. C. 29102
(803) 473-4882

FILED PURSUANT TO DOCKET NO. 92-651-W - ORDER NO. 93-670

EFFECTIVE DATE: UPON FURTHER ORDER OF THE COMMISSION.

WATER SERVICE

MONTHLY SERVICE CHARGE:

FLAT RATE-----\$14.00 PER MONTH

SCHEDULE OF OTHER CHARGES

TAP FEE-----\$200.00